IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: 20.9.2006

Sheilly Arora

...Appellant

versus

Ajnandan Singh and others

... Respondents

CORAM:- Hon'ble Mr. Justice Uma Nath Singh.

Present: Mr.O.P.Hoshiarpuri, Advocate
for the appellant.
Mr.Sanjiv Gupta, Advocate for
Mr.V.Ramswaroop, Advocate
for respondent No.2.
Mr.Sudhir Pruthi, Advocate
for respondents 5 to 7.

UMA NATH SINGH, J. (ORAL)

This judgment shall also dispose of Cross Objection No.6-CII of 2006 filed by the claimants, as both the matters arise out of a common award dated 3.2.2004 passed by learned Presiding Officer, Motor Accident Claims Tribunal, Jalandhar, in MACT No.116 of 2001, awarding a sum of Rs.7,90,000/- in death case of a married JBT Teacher, aged 47 years on the date of accident.

As regards the cross-objection, as per salary certificate, Ex.P-2, the deceased was getting basic salary of Rs.5320/-, DA Rs.2394, RAA Rs.266/- and MA Rs.250/-. The total salary has been calculated at Rs.8549/-. The Tribunal has taken into consideration the estimated salary at Rs.7,000/- but has not taken into account the necessary deductions out of the total salary. The deceased was aged 47 years and, therefore, a suitable multiplier of 13 has been applied. The Tribunal has awarded adequate

amount under all the heads. As the Tribunal has already calculated the amount not on carry home salary but on estimated salary, which also appears to be a little higher, I am not inclined to allow the cross-objection. Hence, it is, hereby, dismissed.

As regards the FAO by the owner, the Insurance Company, though has paid the compensation amount, has been granted recovery right only on the basis of presumption that the driver of the offending vehicle was not holding a valid driving licence. The discussion of relevant evidence in para No.17 under Issue 8 at page 31 appears to be unsatisfactory, and rather, the onus has been shifted on to the owner of the vehicle. Moreover the oral evidence available in the Court on appearance of the officials of the District Transport Officers, Jalandhar, and Hoshiarpur, has been brushed aside without any valid reason. In fact, the onus is always on the Insurance Company to prove by adducing evidence that the driver of the offending vehicle was not holding a valid driving licence on the date of accident. The discussion as contained in para 17 is reproduced as under for ready reference:-

> "17. As per oral testimony of RW3, she had employed Ajanandan Singh in mid of June, 2000. It is admitted that the last renewal was valid upto 20.3.2002. That means she had employed Ajnandan Singh, when he was not having any valid driving licence. She had also admitted in her cross-examination that she does not know if Ajnandan Singh got licence renewed after 20.3.2002. It gives rise to the inference that respondent No.2 Ajnandan Singh was not having a valid driving licence when he was employed by respondent No.1, Shailly Arora. It is

also remained to be proved that he was having any valid driving licence on 15.10.2001 when the accident had taken place. In view of the observations made hereinbefore the oral testimony of RW1 Kuldip Chand, Clerk from the office of DTO Jalandhar as well as RW3 Kuldip Singh, Clerk from the office of DTO, Hoshiarpur, need not be discussed at length, who are respectively regarding non-issuanance of licence and valid renewal till 20.3.2002. Accordingly this issue is decided in favour of respondent No.3, Insurance Co. and petitioners and against respondent No.1 & 2 that respondent No.2 Ajnandan Singh was not having a valid driving licence at the time of accident as proved on the record."

Under the circumstances, I hold that the Insurance Company has not discharged the onus of proving that the driver of the offending vehicle was not holding a valid driving licence, and the evidence available to substantiate the case of the owner of the offending vehicle that his driver was holding a valid driving licence has been discussed in a manner which shifts the burden on the owner.

Accordingly, the FAO is allowed limited to setting aside of the recovery right granted to the Insurance Company.

**September 20, 2006** **( UMA NATH SINGH )**
pk **JUDGE**